

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AJAIB SINGH,

Petitioner,

v.

ALBERTO S. GONZALES, *et al.*,

Respondents.

CASE NO. C06-0500RSM

ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS

The Court, having reviewed the Petition for Writ of Habeas Corpus, the government's Status Report and Recommendation, Petitioner's Response and exhibits, the Administrative Record, the Report and Recommendation of the Honorable Monica J. Benton, United States Magistrate Judge, Petitioner's Objections, Respondents' Response thereto, and the remaining record, finds and orders as follows:

(1) The Court ADOPTS the Report and Recommendation with the following additional comments: the Court is not persuaded that the Magistrate Judge erred in determining that petitioner's removal is reasonably foreseeable. The mere fact that more than six months has passed since petitioner was taken into INS custody does not satisfy his burden. *See Lema v. INS*, Case. No. C02-627L (W.D. Wash. Aug. 8, 2002). As this Court explained in *Lema*:

While an alien's detention will no longer be presumed reasonable after six months, there is nothing in *Zadvydas* which suggests that the Court must or even should assume that any detention exceeding that length of time is unreasonable. Rather, the passage of time is simply the first step in the analysis. Petitioner must then provide 'good reason to believe that there is no

1 significant likelihood of removal in the reasonably foreseeable future.’ The
2 Supreme Court’s effort to promote uniformity by providing a presumptively
3 reasonable period of detention ‘does not mean that every alien not removed
4 must be released after six months. To the contrary, an alien may be held in
5 confinement until it has been determined that there is no significant likelihood
6 of removal in the reasonably foreseeable future.’

7 *Id.* at 3 (citations omitted).

8 Here, petitioner argues that the Magistrate Judge erred in relying on “vague assertions” by
9 respondents that his travel documents would be issued within 90 days of the initial request.
10 However, that 90-day time period has not yet expired, and there is no indication, other than
11 general statistical information provided by petitioner, that such travel documents will not be
12 issued. In *Zadvydas*, the Supreme Court stated that the Court must “take appropriate account
13 of the greater immigration-related expertise of the Executive Branch” in reviewing cases of
14 alleged indefinite detention. *Zadvydas*, 121 S. Ct. at 2504. Based on the record, there is no
15 reason to believe at this time that respondents will not be able to remove petitioner in the
16 reasonably foreseeable future. Accordingly, the Court finds that respondents have provided
17 sufficient evidence to rebut petitioner’s allegations that removal is not foreseeable.

18 The Court notes, however, that respondents’ last communication with India’s Ministry of
19 External Affairs/Foreign Ministry occurred on April 28, 2006. (*See* Dkt. #12). It also appears
20 that respondents have made no further efforts to verify whether petitioner’s travel documents
21 will indeed be forthcoming before the end of July. Based on this period of inaction, and on the
22 foregoing reasons, the Court will DENY petitioner’s habeas petition, but it will not be
23 dismissed. The Supreme Court noted in *Zadvydas* that “as the period of prior post-removal
24 confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to
25 shrink.” *Zadvydas*, 121 S. Ct. at 2505. Thus, if petitioner is still in custody in 30 days from the
26 date of this Order, the Court believes that the record, which currently supports denial of the
habeas petition, loses its force. Based on this belief, the Court will retain jurisdiction over the
action to ensure efficient resolution of any future disputes. *See Athwal v. Ashcroft*, Case No.

1 C02-1423L (W.D. Wash. Dec. 10, 2002)) (supporting this disposition); *Tan v. INS*, Case. No.
2 C02-0122L (W.D. Wash. July 29, 2002)(same);

3 (2) Defendants' Motion to Dismiss (Dkt #11) is GRANTED IN PART, and the Petition
4 for Habeas Corpus (Dkt. #3) is DENIED at this time;

5 (3) This action WILL NOT BE DISMISSED. In order to ensure the efficient resolution
6 of any future disputes, the Court will retain jurisdiction over the matter. Respondents shall file a
7 report on the status of petitioner's removal on or before August 15, 2006. If petitioner remains
8 in custody as of that date, the Bureau of Immigration and Customs Enforcement ("ICE") shall
9 SHOW CAUSE why his petition of habeas corpus should not be granted. Petitioner shall file a
10 response, if any, no later than August 22, 2006. Respondents shall file their reply, if any, no
11 later than August 25, 2006; and

12 (4) The Clerk shall note an Order to Show Cause on the Court's calendar for August 15,
13 2006, and shall send a copy of this Order to all counsel of record, and to the Honorable Monica
14 J. Benton.

15 DATED this __14th__ day of July 2006.

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17 RICARDO S. MARTINEZ
18 UNITED STATES DISTRICT JUDGE
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